

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

HENRY L. PRUITT and
SHERYL DILWORTH

PLAINTIFF

V.

CIVIL ACTION NO.1:14CV38-DAS

UNITED STATES OF AMERICA

DEFENDANTS

MEMORANDUM OPINION

The defendant has moved to dismiss this action as to the plaintiff, Sheryl Dilworth. This action was brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.* The defendant argues this court lacks jurisdiction to entertain this claim because Dilworth has failed to exhaust her administrative remedies, and the sovereign immunity of the United States has therefore not been waived. Anyone wishing to pursue a tort claim against the United States must first present a claim to the appropriate agency and exhaust all administrative remedies. 28 U.S.C § 2675 (a). The United States has submitted an affidavit from the individual responsible for receiving, maintaining and processing accident claims for the subject accident. The affidavit states that a search was made of the agency records and no claim by Dilworth was found. Dilworth has filed no response and has not produced any evidence to show that she filed a claim prior to suit.

If a party fails to strictly comply with the terms of the Federal Torts Claim Act, the sovereign immunity of the United States is not waived and this court lacks jurisdiction. *U.S. v. Mitchell*, 445 U.S. 535, 538 (1980). The court being satisfied that Dilworth failed to exhaust her administrative remedies finds that it lacks subject matter jurisdiction over the claim set out by Dilworth. This action, as to Sheryl Dilworth, must be dismissed for lack of jurisdiction.

SO ORDERED AND ADJUDGED this the 9th day of October, 2014.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE